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October 29, 2008

VIA OVERNIGHT MAIL AND ECF

The Honorable Katharine S. Hayden, U.S.D.J.
United States District Court
Frank R. Lautenberg U.S. P.O. & Cthse.
Room 311
P.O. Box 999
Newark, New Jersey 07101-0999

Re: Louisa Agresti v. The Medicines Company
Civil Action No. 07-cv-1936 (KSH) (PS)

Dear Judge Hayden:

As you know, Epstein Becker & Green, P.C. represents defendant The Medicines Company ("TMC") in the above-referenced matter. This matter was originally scheduled for a settlement conference on October 27, 2008. By Text Order dated October 17, 2008, the Court adjourned the conference from October 27, 2008 to November 25, 2008. More recently, by Text Order dated October 24, 2008, the Court adjourned the conference from November 25, 2008 to December 22, 2008 at 2:00 p.m.

Defendant certainly understands that the Court needs to reschedule conferences from time to time to manage its busy schedule. I write, however, to seek the Court's guidance about a time sensitive issue that defendant indicated to the Magistrate Judge it would address with Your Honor at the October 27, 2008 conference. Additionally, several deadlines set by Magistrate Judge Shwartz were conditioned upon the settlement conference occurring on October 27, 2008.

First, at the previously scheduled October 27, 2008 conference, defendant planned to seek the Court's guidance regarding its preference of the form of the upcoming deposition of defendant's expert psychiatrist, scheduled to be conducted on November 13, 2008. Due to the nature of plaintiff's claims in this case and her allegations of emotional distress, defendant arranged for plaintiff to undergo an independent medical examination ("IME"). Because

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plaintiff has resided in Florida since December 2005, defendant retained a physician in Florida, Dr. Barbara Stein, and had the IME conducted there for plaintiff's convenience, rather than force her to travel to New Jersey for the examination.

Plaintiff is scheduled to depose Dr. Stein in Florida on November 13, 2008. At the October 27, 2008 conference, it was defendant's intention to seek the Court's guidance as to whether that deposition should be videotaped and conducted in a manner so that it could be used at trial, with defendant beginning the deposition with its direct examination, plaintiff conducting cross-examination and so forth. If, however, the Court does not wish for the parties to pursue this approach, the deposition could be conducted as a discovery deposition. Defendant reserves its right to call Dr. Stein live at the time of trial, if she is available, but wanted to present all options to the Court in the event that the chosen trial date conflicts with Dr. Stein's availability in such a way that defendant could be prejudiced by an unavailable expert witness.

Moreover, Magistrate Judge Schwartz scheduled the October 27, 2008 conference with the understanding that settlement would be addressed at that time. Accordingly, Magistrate Judge Schwartz set the disposition motion schedule so that the deadline to submit summary judgment briefs to the Court would be shortly after that conference. The current summary judgment briefing schedule provides that moving papers are due on or before November 14, 2008, opposition briefs are due on or before December 1, 2008 and reply papers due on or before December 8, 2008. The current return date is December 15, 2008.

Given the time sensitive nature of these issues, defendant requests that Your Honor schedule a short telephone conference to address the above issues at your earliest convenience. Counsel is available should Your Honor have any questions.

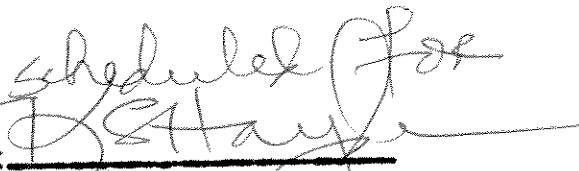
Respectfully submitted,


James P. Flynn

JPF:ldd

cc: Steven Siegler, Esq. (via email, ECF and regular mail)

Telephone conference scheduled for 11/6/08. Letter to follow.

SO ORDERED: 
DATE: 11/5/08